

Excerpts

Approved Planning Commission Minutes

July 11, 2001

Application No. ZM-59-01 (conditional), James L. Clayton: Request to amend the York County Zoning Map by reclassifying approximately 4.04 acres located at the northeast corner of the intersection of Dare Road (Route 621) and Allens Mill Road (Route 655) from RR (Rural Residential) to R20 (Medium-density single family residential), subject to conditions voluntarily proffered by the property owners. The property is further identified as Assessor's Parcel No. 25-477 and a portion of Assessor's Parcel No. 25-(25)-1.

Mr. Tim Cross presented a summary of the staff memorandum dated June 29, 2001, in which the staff recommended approval by the adoption of Resolution PC01-22.

Responding to members' questions, Mr. Cross noted that the Comprehensive Plan, while not addressing the site *per se*, recommends low-density development in that area of the County. However, the lots were platted for and current zoning was applied to the Millside and Mill Cove Estates subdivisions many years before the Comprehensive Plan was adopted, rendering nonconforming the Rural Residential lots that are smaller than one acre. Mr. Cross added that any new development, including building setbacks, must conform to the current Ordinance unless the pre-existing setbacks are depicted on the respective subdivision plats.

With regard to the possible impact of runoff from the proposed development on Chisman Creek, Mr. Cross stated that, in staff's opinion, the benefit of preventing driveway access to Dare Road outweighs the negative impact of a slight increase in impervious surface in the area of the creek. Given the geographic characteristics of the area, he said, the distance from Chisman Creek to the proposed residential development would logically have been considered during the Comprehensive Plan process.

Mrs. White asked about possible traffic hazards at the Dare Road/Allens Mill Road intersection, and Mr. Cross noted that traffic statistics report no more than one reportable accident at that location in any recent year. For that reason, there are no plans to request a signal study at this time.

Other concerns were expressed about any additional driveways with access from Dare Road, the design of the proffered privacy fence, and encroachment on wetlands. All of those items had been addressed by the applicant, according to the staff, and were not considered problematical.

Chair Semmes opened the public hearing.

Mr. Charles Newbaker, The Sirine Group, Ltd., Gloucester, Virginia, represented the applicant. Mr. Newbaker explained that the proposed turnaround at the end of a private lane will fall strictly within the limits of the most easterly parcel (Lot 6 on the plan) and will not impact either the wetlands or the 100-foot Resource Protection Area.

Mr. Newbaker responded to a query about the private road, saying it will be 15 feet wide, at the request of the Department of Fire and Life Safety, and asphalt-covered. A private water line will be installed down the road as requested by the Department of FLS, he added, to protect the proposed six new homes on the private road as well as an existing home on the corner.

Mr. Shepperd inquired about possibly modifying the proposal by constructing the private road in the area of the privacy fence so that the houses face Dare Road, thereby providing less noise and more green space. Mr. Newbaker said the majority of the property is wooded anyway, and the developer had concluded that running the road behind the privacy fence would provide adequate buffering. The Virginia Department of Transportation has approved the road design, he added.

Mr. H. L. Stepp, 510 Allens Mill Road, represented himself and Mr. Ernest Smith of 512 Allens Mill Road, and said they are not opposed to building houses but are opposed to building six homes on the site because, in his opinion, the proposed development would be prohibited under his subdivision covenants which provide 100-foot setbacks off Allens Mill Road. He thought his covenants would mean nothing if this development were to be approved.

Mr. Cross said he had studied the covenants to which Mr. Stepp referred, which apply to a subdivision formed by the Kennedy parcel and the three parcels north of it about 20 years ago. The staff did not find anything during its review of the covenants that would preclude Mr. Kennedy from subdividing his property and selling a portion of it to the developer, but the staff had given a copy to the applicant, Mr. Clayton, and his attorney for their review. He added that the County does not enforce private covenants.

Mr. Stepp added that he did not want to live next to a subdivision and had thought his covenants would protect him from that.

Mr. Hugh R. Wood, 101 Old Dare Road, noted that Allens Mill Road has a 30-foot right-of-way, not 50 feet such as that on Dare Road. He said his neighborhood was built in the early 1950s and has been boxed in by subdivisions; he was opposed to this application.

Ms. Delma Bristow, 306 Robs Road, was opposed to the rezoning. She said most of the surrounding land is zoned RR and she would want it to remain RR. She spoke of minimum lot sizes and said she had wanted to subdivide two acres of her own property but was told that she had to have a minimum one-acre lot.

Mr. Charles Ruge, 108 Albacore Drive, said he agreed with the speakers who preceded him and indicated he was also concerned about violations of the Chesapeake Bay Preservation Act. He said the drainage ditch between Mill Cove subdivision and Allens Mill properties is filling with sediment and could easily become useless with additional construction. He thought another six homes would not be good for the community.

At this point, **Mr. Stepp** said the National Fire Code states that the private road in the proposed development is supposed to be 24 feet wide and the developer is proposing it to be 14 feet wide. He handed a copy of the Fire Code to the Chair.

Ms. Judy Smith, 507 Allens Mill Road, lives directly across from the site of the proposed development. She pointed out that Allens Mill Road is a small, heavily traveled road and more cars would be a hazard for children and for drivers backing out of driveways on Allens Mill Road. She was not opposed to homes being built on the developer's site but felt that six homes was too many. She said she could not support commercial use of that property, either.

The Chair, hearing no others, closed the public hearing.

Mr. Hendricks was opposed to the application because the Comprehensive Plan states that the County will defend against development encroaching on waterways, and it further recommends a low-density designation for the property in question. He felt the Commission needed to pay attention to the Comprehensive Plan.

Mr. Shepperd agreed that the Comprehensive Plan implies that the property should remain Rural Residential, and he expressed concerns about possible impact on the Chesapeake Bay and traffic.

Mr. Simasek said in this particular case, the proposal would allow the County control over how the property is developed and would protect Dare Road from more driveways, allow a privacy fence, fire lane, and water and sewer. He believed that, in the "big picture," approving six homes on that property would be an acceptable tradeoff for the controls available to the County in this application. Mr. Hendricks disagreed, stating he felt that approval could lead to future actions contrary to the Comprehensive Plan. Mr. Simasek argued that each application should stand on its own merits. If future applications could not stand on their own merits, he did not think they should be approved.

Mr. Mark Carter indicated that surrounding properties would benefit from the additional fire protection and water and sewer connections. He did not agree that the property is "boxed in" because the boundary around Allens Mill and Dare Roads could theoretically be extended along Dare Road in the future. Since there are certain unique characteristics to the proposal, the staff does not view it as precedent setting, he added.

Messrs. Shepperd, Semmes and Beil all indicated their opposition to the application because it does not provide adequate benefits or protections for surrounding property owners.

Mr. Heavner pointed out that, even if approved, the same house that is presently visible on the corner of Dare and Allens Mill Roads would still be the only visible house, not the additional six that are

proposed to be built, because it is a heavily wooded area. No driveways would be added to Dare Road under this proposal, he said. Mr. Heavner thought approval would be to the County's advantage. Ms. White inquired about the covenants mentioned by the speaker, Mr. Stepp, and Mr. Carter stated that covenants are not enforceable by the County, only by private parties, and it is a matter for lot owners who are subject to the covenants.

Mr. Hendricks moved adoption of Resolution PC01-22 for approval. By roll call vote the motion was defeated 2:5 (Yes – Simasek, Heavner; No – Beil, Shepperd, White, Hendricks, Semmes).